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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
DEWEY & LEBOEUF LLP,	**Case No. 12-12321 (MG)**
Debtor.	

OBJECTION OF WILLKIE FARR & GALLAGHER LLP, ALLEN & OVERY LLP, ARNOLD & PORTER LLP, BAKER BOTTS LLP, BAKER & MCKENZIE LLP, COVINGTON & BURLING LLP, COZEN O'CONNOR, DLA PIPER LLP (US), DRINKER BIDDLE & REATH LLP, FOLEY HOAG LLP, GOODWIN PROCTER LLP, GREENBERG TRAURIG LLP, HOGAN LOVELLS US LLP, HOLLAND & KNIGHT LLP, KAYE SCHOLER LLP, KING & SPALDING LLP, LATHAM & WATKINS LLP, LINKLATERS LLP, MAYER BROWN LLP, PROSKAUER ROSE LLP, SCHULTE ROTH & ZABEL LLP, SHEARMAN & STERLING LLP, SUTHERLAND ASBILL & BRENNAN LLP, VENABLE LLP, VINSON & ELKINS LLP, WEIL GOTSHAL & MANGES LLP, WHITE & CASE LLP, AND WINSTON & STRAWN LLP TO THE DEWEY & LEBOEUF LIQUIDATION TRUST'S OMNIBUS EX PARTE APPLICATION PURSUANT TO BANKRUPTCY RULE 2004 FOR ORDER AUTHORIZING UNFINISHED BUSINESS EXAMINATIONS

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

Willkie Farr & Gallagher LLP, Allen & Overy LLP, Arnold & Porter LLP, Baker Botts LLP, Baker & McKenzie LLP, Covington & Burling LLP, Cozen O'Connor, DLA Piper LLP (US), Drinker Biddle & Reath LLP, Foley Hoag LLP, Goodwin Procter LLP, Greenberg Traurig LLP, Hogan Lovells US LLP, Holland & Knight LLP, Kaye Scholer LLP, King & Spalding LLP, Latham & Watkins LLP, Linklaters LLP, Mayer Brown LLP, Proskauer Rose LLP, Schulte Roth & Zabel LLP, Shearman & Sterling LLP, Sutherland Asbill & Brennan LLP, Venable LLP, Vinson & Elkins LLP, Weil Gotshal & Manges LLP, White & Case LLP, and Winston & Strawn LLP (collectively, the "Firms") hereby file this Objection (the "Objection") to the Omnibus Ex Parte Application Pursuant To Bankruptcy Rule 2004 For Order Authorizing

Unfinished Business Examinations (Docket No. 1565) (the "Application") submitted by the Dewey & LeBoeuf Liquidation Trust (the "Trust"). In support of this Objection, the Firms respectfully state:

1. The Firms oppose the Application as premature and inappropriate. The Trust seeks invasive discovery of financial and proprietary information from numerous national and international law firms in order to determine whether "[t]he Trust may have claims against the Firms for 'unfinished business' under *Jewel v. Boxer*, 156 Cal. App. 3d 171 (1984) and/or New York Partnership Law." (Application at 4.) In that case, the California First District Court of Appeal held that "the Uniform Partnership Act requires that attorneys' fees received on cases in progress upon dissolution of a law partnership are to be shared by the former partners according to their right to fees in the former partnership, regardless of which former partner provides legal services in the case after the dissolution." *Jewel*, 156 Cal. App. 3d at 174. The Trust cites Judge McMahon's decision in *Development Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP (In re Coudert Brothers)*, 480 B.R. 145 (S.D.N.Y. 2012), in which she granted a declaratory judgment that client matters of Coudert Brothers that were pending, but uncompleted, on the date of its dissolution, including those billed on an hourly basis, were property of Coudert Brothers' estate. *Id.* at 151, 160.

2. What the Application completely fails to mention, however, is that Judge McMahon's decision in *Coudert* was subsequently contradicted by a decision of Judge Pauley in *Geron v. Robinson & Cole LLP (In re Thelen LLP)*, 476 B.R. 732 (S.D.N.Y. 2012), and that both cases are the subject of appeals now pending before the United States Court of Appeals for the Second Circuit (together, the "Appeals").

3. Briefing on the Appeals is complete. The Second Circuit heard oral argument in *Thelen* on October 7, 2013 and, on October 11, 2013, adjourned *sine die* oral argument in *Coudert* pending the court's determination of *Thelen*. Parties to the Appeals have suggested that it may be appropriate for the Second Circuit to certify to the New York Court of Appeals the question of whether a dissolved law firm is the owner of client matters that are billed by the hour and are pending, but uncompleted, on the date of its dissolution.

4. In the likely event that the Second Circuit or the New York Court of Appeals (if a question is certified to that court) agrees with Judge Pauley's decision in *Thelen,* then the Trust will not be able to assert claims against the Firms for "unfinished business." As such, it is premature to conduct invasive pre-litigation discovery with respect to such claims, as they may not even be recognized under New York law (or any other law that may apply).

5. Moreover, even in the unlikely event the Appeals are resolved in favor of the Trust's position, the threatened claims may still not be colorable as a matter of law or fact. As an example, by their terms, the *Jewel* and *Coudert* line of cases relate only to "unfinished business" completed by a partner who leaves a firm *after* its dissolution, and completes the work at a new firm. In this case, however, Dewey & LeBoeuf LLP had not dissolved before the relevant partners departed, so these "unfinished business" claims cannot apply to them, even if such claims are cognizable under New York law for post-dissolution departures. Accordingly, any discovery against the Firms may be inappropriate, regardless of the outcome of the Appeals.[1]

[1] All of the Firms expressly reserve the right to oppose any discovery sought by the Trust or any unfinished business claims the Trust may assert, both on the basis of the arguments set forth in this Objection as well as any others that may apply. For example, to the extent the Court authorizes the Trust to take any Rule 2004 discovery, the Firms expressly reserve the right to interpose all applicable objections to any discovery requests propounded by the Trust pursuant to that authorization.

6. Further, the requested discovery itself is completely improper under the circumstances. In the Application, the Trust seeks copies of attorney-client engagement letters, firm billing and invoice information, firm revenue, expense and profitability information, partner compensation data, and other information the Firms should not be required to disclose in the absence of any actual claim or controversy, as well as dozens of depositions. Allowing the Trust to propound this invasive discovery against the Firms regarding claims that may not be cognizable as a matter of law is entirely inappropriate.[2]

7. Nor does the Trust need the discovery requested in the Application in order to determine whether to commence litigation. This debtor analyzed the factual basis for potential unfinished business claims during the chapter 11 proceedings, discussed this analysis with former Dewey & LeBoeuf LLP partners, carved out potential unfinished business claims from the estate's settlements with many former partners of Dewey & LeBoeuf LLP, and made settlement demands to many of the firms listed in the Application concerning alleged unfinished business claims. All of the information gathered by the estate during the chapter 11 process is available to the Trust, rendering its application for pre-litigation discovery unnecessary in order to determine whether to assert unfinished business claims against the Firms. Instead, the discovery sought by the Trust here concerns the potential damages that the Trust could recover in connection with successful unfinished business claims—information that can be obtained under the normal rules of civil discovery in the event that the Trust is able to state unfinished business claims against the Firms.

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[2] Moreover, the former Dewey & LeBoeuf LLP partners identified on Exhibit A to the Application include some whom the estate has expressly released from any unfinished business claims. Any Rule 2004 discovery as to these partners and their current firms is inappropriate for this additional reason.

8. Allowing such broad and costly discovery to proceed, notwithstanding the pendency of Appeals whose outcome may moot the Application in its entirety, has the potential to damage both the estate and the Firms by requiring them to devote significant time and resources to discovery litigation and, potentially, document productions and depositions that may ultimately be of no benefit to the estate. As a result, if the Court does not deny the Application outright, it would, at the very least, be appropriate to stay consideration of the Application until the Appeals have been finally determined.

Conclusion

9. For all of the foregoing reasons, the Firms respectfully request that the Court deny the Application or, in the alternative, stay consideration of the Application pending a final resolution of the Appeals, and award the Firms such other and further relief as is just and proper.

Dated: New York, New York
October 23, 2013

Respectfully submitted,

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